



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 379

APPLICANT NF Ltd

RESPONDENT CM

The Tribunal orders:

CM is to pay to NF Ltd the sum of \$991.90 on or before 10 August 2023.

Reasons:

1. In May 2021, CM ordered some firewood from NF Ltd.
2. An invoice in respect of the firewood was generated and sent on 18 May 2021 and the firewood was delivered on 20 May 2021.
3. CM did not pay for the firewood.
4. NF Ltd sent a number of reminders and statements in respect of the amount due and attempted to contact CM. No response was received.
5. In March 2022, NF Ltd tried to contact CM by phone. Shortly after that NF Ltd received an email from CM advising that he was aware he had an outstanding account. He stated that the wood ordered was extremely wet and unseasoned, particularly the gum. He asked if the price could be revised.
6. NF Ltd replied and said that as it was now almost a year later and NF Ltd could no longer confirm the condition of the wood, it was unable to revise the price.
7. There was no response to that, and NF Ltd then referred the matter to a debt collection agency.
8. The debt collection agency eventually made contact with CM and then advised NF Ltd to take the matter to the Disputes Tribunal as CM was disputing the matter.
9. NF Ltd is seeking \$991.90 which is made up of \$870.00 for the firewood and \$121.90 for debt collection costs.
10. There was no attendance at the hearing by CM.
11. Approximately one and half hours before the hearing CM emailed the Tribunal and advised that he had had a vehicle breakdown in [region] in an area where there was minimal cell phone coverage. He asked for the matter to be changed to Friday or whatever day suited.

12. The Tribunal refused that application to adjourn. There was no supporting evidence verifying what CM said. CM had previously had two adjournments of this matter for personal family matters. Those applications were also made shortly before the scheduled hearing time. The Tribunal was willing to accede to those application without supporting evidence but is not willing to adjourn the matter a third time based on unsupported applications made shortly before the hearing. The applicant, NF Ltd, is entitled to have its claim heard without further delay.
13. The Tribunal did make two attempts to contact CM at the scheduled hearing time, but the call went through to voicemail. On the first occasion the Tribunal left a message confirming that the adjournment had been refused. The call was not answered on either occasion.
14. The issues the Tribunal has to consider are:
 - a. Did NF Ltd supply the wood as requested by CM?
 - b. Was the wood supplied of acceptable quality and if not, what remedy does CM have?
 - c. Is CM obliged to pay NF Ltd the sum of \$870.00 for the firewood or any other amount?
 - d. Is CM liable for debt collection costs of \$121.90?

Did NF Ltd supply the wood as requested by CM?

15. A contract may be defined as a legally binding agreement or a promise or set of promises between two or more parties that the law will enforce.
16. In May 2021, NF Ltd supplied four m3 of oregon and three m3 of blue gum firewood to CM as requested by him. The wood was delivered on 20 May 2021 to [address].
17. CM has never disputed the delivery of the wood. NF Ltd has supplied the wood as requested by CM.
18. In this regard, NF Ltd has done what it promised to do under the contract, which was deliver the firewood.
19. CM has not done what he promised to do, which was pay for the firewood.

Was the wood supplied of acceptable quality and if not, what remedy does CM have?

20. Section 6 of the Consumer Guarantees Act 1993 (“CGA”) means that where goods are supplied to a consumer by a supplier those goods must be of acceptable quality.
21. Section 7 of the CGA sets out what is meant by “acceptable quality”. Goods must be fit for all the purposes for which goods of the type in question are commonly supplied, acceptable in appearance and finish, free from minor defects, safe and durable, as a reasonable consumer fully acquainted with the state and condition of the goods, including any hidden defects, would regard as acceptable, having regard to the nature of the goods, the price, any statements made about the goods on any packaging or label on the goods, the nature of the supplier and the context in which the supplier supplies the goods, any representation made about the goods by the supplier or the manufacturer, and all other relevant circumstances of the supply of the goods.
22. CM stated in an email to NF Ltd in March 2022 that the wood was “*extremely wet and unseasoned, particularly the gum*”.
23. Ms N, representing NF Ltd said that NF Ltd had no way of confirming that as CM had not told NF Ltd there was any issue with the wood until 10 months after it was delivered.

24. Ms N referred to the claim made by CM in his email that he had left three voice messages the previous year in that regard. She said she had checked her phone records and clears her voicemails daily. She said she did not receive any voicemail messages from CM and has no record of him calling NF Ltd.
25. There was no evidence before the Tribunal supporting what CM stated in his email dated 29 March 2022 either in relation to the condition of the wood or the phone calls.
26. There is no evidence before me which satisfies me that the firewood was not of acceptable quality.
27. CM specifically referred to the blue gum in his email. On the 18 May 2021, prior to the ordering of the firewood, Ms N stated to CM *"FYI the blue gum is slightly frosted / damp but has been dry."*
28. CM was made aware of a possible issue with the blue gum before purchase and choose to go ahead with the purchase. He cannot now seek to rely on that issue to claim it was not of acceptable quality.
29. NF Ltd is not in breach of the CGA, and CM has no remedy available to him under the CGA.

Is CM obliged to pay NF Ltd the sum of \$870.00 for the firewood or any other amount?

30. As NF Ltd supplied the firewood as agreed and there was no breach of the CGA by NF Ltd, CM is obliged to pay for the firewood. There was no dispute raised about the cost and so CM is obliged to pay NF Ltd \$870.00.

Is CM liable for debt collection costs of \$121.90?

31. In order to be able to collect debt collection costs, NF Ltd would have to satisfy me that it was part of the original agreement that these costs would be recoverable.
32. The invoice in this matter was sent on 18 May 2021. That was two days prior to the scheduled delivery of the firewood. Payment was due on the day of delivery.
33. The invoice sent states under the heading *"terms of trade"*, *"should your account become overdue, full recovery costs will be added accordingly."*
34. While a supplier cannot add additional terms to a contract after it has been formed, this term was added at the start of the contract and before either party had performed their part of the contract. CM was informed in writing at the start of the contract that recovery costs would be added if his account became overdue. He had the opportunity to consider these terms of trade before proceeding and still chose to go ahead with the purchase.
35. The costs sought of \$121.90 are reasonable costs for the attempted recovery of an account which is now over two years overdue. I am satisfied that CM is liable for these costs.
36. CM is to pay to NF Ltd the sum of \$991.90 on or before 10 August 2023.

Referee: P Byrne
Date: 19 July 2023



Information for Parties

Rehearings

You can apply for a rehearing if you believe that something prevented the proper decision from being made: for example, the relevant information was not available at the time.

If you wish to apply for a rehearing, you can apply online, download a form from the Disputes Tribunal website or obtain an application form from any Tribunal office. The application must be lodged within 20 working days of the decision having been made. If you are applying outside of the 20 working day timeframe, you must also fill out an Application for Rehearing Out of Time.

PLEASE NOTE: A rehearing will not be granted just because you disagree with the decision.

Grounds for Appeal

There are very limited grounds for appealing a decision of the Tribunal. Specifically, the Referee conducted the proceedings (or a Tribunal investigator carried out an enquiry) in a way that was unfair and prejudiced the result of the proceedings. This means you consider there was a breach of natural justice, as a result of procedural unfairness that affected the result of the proceedings.

PLEASE NOTE: Parties need to be aware they cannot appeal a Referee's finding of fact.

Where a Referee has made a decision on the issues raised as part of the Disputes Tribunal hearing there is no jurisdiction for the District Court to reach a finding different to that of the Referee.

A Notice of Appeal may be obtained from the Ministry of Justice, Disputes Tribunal website. The Notice must be filed at the District Court of which the Tribunal that made the decision is a division, within 20 working days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 20 working days if you have been granted an extension of time by a District Court Judge. To apply for an extension of time you must file an Interlocutory Application on Notice and a supporting affidavit, then serve it on the other parties. There is a fee for this application. District Court proceedings are more complex than Disputes Tribunal proceedings, and you may wish to seek legal advice.

The District Court may, on determination of the appeal, award such costs to either party as it sees fit.

Enforcement of Tribunal Decisions

If the Order or Agreed Settlement is not complied with, you can apply to the Collections Unit of the District Court to have the order enforced.

Application forms and information about the different civil enforcement options are available on the Ministry of Justice's civil debt page: <http://www.justice.govt.nz/fines/about-civil-debt/collect-civil-debt>

For Civil Enforcement enquiries, please phone 0800 233 222.

Help and Further Information

Further information and contact details are available on our website: <http://disputestribunal.govt.nz>.